



Administrative Policies and Procedures: 16.24

Subject:	Children of Native American Heritage
Authority:	TCA 37-5-106, Indian Child Welfare Act of 1978 (25 USC 1901-1923);
Standards:	COA: CPS 4.03; CPS 5.02; CPS 11.03; CPS 14.04; CPS 14.04; FC 6.04
Application:	To All Department of Children's Services Employees

Policy Statement:

The Department of Children's Services shall comply with all rules, regulations and laws governing the **Indian Child Welfare Act of 1978 (ICWA)** and make a diligent effort to identify those children/youth and families subject to the Act.

Purpose:

To ensure that all DCS services affecting children identified as Native American are conducted in compliance to the federal guidelines outlined by ICWA. The goal of the ICWA is to strengthen and preserve Native American families and culture.

Procedures:

A. ICWA overview	<p>ICWA sets minimum standards for any child of American Indian heritage involved in a child protective services case, adoption, guardianships, termination of parental rights action, runaway/truancy matters, or voluntary placement of children who are unmarried and under the age of eighteen (18).</p> <p>The ICWA requires that cases involving Indian children be heard in tribal courts if possible, and permits a child's tribe to be involved in state court proceedings. It requires testimony from expert witnesses who are familiar with Indian culture before a child can be removed from his/her home. If a child is removed, either for foster care or adoption, the law requires that Indian children be placed with extended family members, other tribal members, or other Indian families. The state of Tennessee is within the Eastern Region jurisdiction of the Bureau of Indian Affairs.</p>
B. Responsibilities of family service worker	<ol style="list-style-type: none">1. During the first initial contact with the child/family, if there is reason to believe that a child or family is Native American heritage, verification of the child/family's status must be confirmed from either the Bureau of Indian Affairs or the affiliated tribe.2. The child/family and significant others, as appropriate, and with the consent of the family, are advised of ongoing progress, and will participate in service planning as appropriate. The assessment must be completed whether or not

	<p>a child/family is registered with a tribe.</p> <p>3. All actions initiated with an ICWA case must be in collaboration with and under the guidance of Central Office Legal Counsel or appropriate Regional Legal Counsel.</p>
C. Determination of Indian child's tribe	<p>1. If it is believed or confirmed that the child or parents are Native American but the tribe or registration information is <u>not</u> known, tribal affiliation must be determined. The family services worker must contact the Bureau of Indian Affairs for assistance and must be done in collaboration with the appropriate Regional Legal Counsel and the family. (Not all tribes fall under the Indian Child Welfare Act.)</p> <p>2. Tennessee is in the Eastern Region of the Bureau of Indian Affairs and the contact information for assistance is listed below:</p> <p style="text-align: center;">Bureau of Indian Affairs Eastern Region 545 Marriott Drive, Suite 700 Nashville, TN 37214 Phone: (615) 564-6700 Fax: (615) 564-6701</p> <p>4. The Bureau will instruct on the process and further procedures to be followed to determine the Indian child/family's tribe or affiliation.</p> <p>5. If the case involves a child/family outside of the Eastern Region jurisdiction of the Bureau of Indian Affairs, contact the above Bureau or the appropriate Regional Legal Counsel for assistance.</p>
D. Confirmation of tribal affiliation	<p>1. If notice is received that the child falls under ICWA, a determination must be made to see if the child/family is under the jurisdiction of ICWA and the involvement of the tribe in planning for the child(ren). It is anticipated that the Bureau will require the following information for tribal notification:</p> <ul style="list-style-type: none"> a) Identifying information, i.e., parent(s) names and birth dates, grandparent's names, child(ren)'s names and birth date; address and telephone number; b) Proof of affiliation (i.e., registration or band number) or any other identifying information, if available; c) Reason for current court action (i.e., adjudication hearing; petition; complaint or other document by which the proceeding was initiated); d) A statement of the right of the biological parents or Indian custodians and the Indian child's tribe to intervene in the proceeding; e) Name of attorney; f) Location, mailing address and telephone number of the Court; g) A statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the Court to transfer the proceeding to the Indian child's tribal Court; and

	<p>h) Confidentiality statement.</p> <p>2. The tribe must be notified by registered letter with return receipt requested.</p>
E. Time limits and extensions	<p>The time limits listed below are minimum time periods required by the Act. The Court may grant more time to prepare where State law permits.</p> <ol style="list-style-type: none"> 1. A tribe, parent or Indian custodian entitled to notice of a child custody proceeding has a right, upon request, to be granted an additional twenty (20) days from the date upon which notice was received to prepare for participation in the proceeding. 2. The proceeding may not begin until all of the following dates have passed: <ol style="list-style-type: none"> a) Ten days (10) after the parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice; b) Ten days (10) after the parent or Indian child's tribe (or the Secretary if the Indian child's tribe is unknown to the petitioner) has received notice; c) Thirty days (30) after the parent or Indian custodian has received notice if the parent or Indian custodian has requested an additional twenty (20) days to prepare for the proceeding; and d) Thirty (30) days after the Indian child's tribe has received notice if the Indian child's tribe has requested an additional twenty (20) days to prepare for the proceeding.
F. Emergency removal of an Indian child	<ol style="list-style-type: none"> 1. Whenever a confirmed American Indian child is removed from physical custody of the child's parent or Indian custodians pursuant to the emergency removal or custody provisions of State law, DCS shall immediately confirm the address and tribe, if available, of the child. 2. When a Court order authorizing continued emergency physical custody, the petition for that order shall be accompanied by an affidavit containing the following information: <ol style="list-style-type: none"> a) The name, age and last known address of the Indian child. b) The name and address of the child's parents and Indian custodians, if any. If such persons are unknown, a detailed explanation of what efforts have been made to locate them shall be included. c) Facts necessary to determine the residence of the Indian child and whether the residence is on an Indian reservation. If the residence is believed to be on an Indian reservation, the name of the reservation shall be listed. d) The tribal affiliation of the child, parents and/or Indian custodians. e) A specific and detailed account of the circumstances that lead to emergency removal of the child. f) If the child is believed to reside on a reservation where the tribe exercises

	<p>exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction.</p> <p>g) A statement of the specific actions that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody.</p> <p>3. If the Indian child is not returned to the parents or Indian custodians or jurisdiction is not transferred to the tribe, DCS must promptly commence a State Court proceeding for foster care placement.</p> <p>4. If the child resides on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, such placement must terminate as soon as the imminent physical damage or harm to the child which resulted in the emergency removal no longer exists or as soon as the tribe exercises jurisdiction over the case- whichever is earlier.</p> <p>5. Absent extraordinary circumstances, temporary emergency custody shall not be continued for more than ninety (90) days without a determination to the Court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.</p>
G. Improper removal of an Indian child	<p>1. If, in the course of any Indian child custody proceeding, the Court has reason to believe that the child may have been improperly removed from the custody of his/her parent or Indian custodian or that the child has been improperly retained after a visit or other temporary relinquishment of custody, and that DCS is responsible for such removal or retention, the Court shall immediately stay the proceedings until a determination can be made on the question of improper removal or retention.</p> <p>2. If the Court finds that DCS is responsible for an improper removal or retention, the child shall be immediately returned to his or her parents or Indian custodian.</p>
H. Foster care or pre-adoptive placement	<p>In any foster care or pre-adoptive placement of an Indian child:</p> <p>1. The child must be placed in the least restrictive setting which:</p> <ul style="list-style-type: none"> a) Most approximates a family; b) The child's special needs are met; and c) Is in reasonable proximity to the child's home. <p>2. Preference must be given in the following order, absent without good cause to the contrary, to placement with:</p> <ul style="list-style-type: none"> a) A member of the Indian child's extended family; b) A foster home, licensed, approved or specified by the Indian child's tribe, whether on or off the reservation; c) An Indian foster home licensed or approved by an authorized non-Indian

	<p>licensing authority; or</p> <p>d) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.</p> <p>3. The Indian child's tribe may establish a different order of preference by resolution, and that order of preference shall be followed as long as the criteria above are met.</p>
I. Adoptive placement of an Indian child	<p>1. In any adoptive placement of an Indian child under State law, preference must be given (in the order listed below) to placement of the child with:</p> <p>a) A member of the Indian child's extended family;</p> <p>b) Other members of the Indian child's tribe; or</p> <p>c) Other Indian families, including families of single parents.</p> <p>2. The Indian child's tribe may establish a different order of preference by resolution. That order of preference must be followed so long as the placement is the least restrictive setting appropriate to the child's needs.</p> <p>3. Unless a consenting parent voices a desire for anonymity, the Court or agency shall notify the child's extended family and the Indian child's tribe that their members will be given preference in the adoption decision.</p>
J. Indian child adjudicated delinquent	<p>A Court proceeding involving placement of a child based upon a delinquent act, which if committed by an adult would be deemed a crime, is <u>not covered under ICWA.</u></p>
K. Most requested Indian tribes for TN	<p>Listed below are the most requested Indian tribes for the state of Tennessee. Information regarding other tribes can be accessed at: <u>List of ICWA Tribal Agents</u>, or the Bureau of Indian Affairs may be contacted for more information.</p> <p><u>Eastern Region:</u></p> <p>1. Eastern Band of Cherokee Indians P.O. Box 507 Cherokee, North Carolina 28719 Phone: (828) 497-6092 Fax: (828) 497-3322</p> <p>2. Mississippi Band of Choctaw Indians P.O. Box 6050 Choctaw, Mississippi 39350 Phone: (601) 650-1741 Fax: (601) 656-8817</p>

	<u>Eastern Oklahoma Region:</u> 3. Cherokee Nation of Oklahoma Attn: Registration Department P.O. Box 948 Tahlequah, Oklahoma 74465 Phone: (918) 456-0671
L. Access to reports	Both DCS and the Indian child's tribe involved in a foster care placement or termination of parental rights proceeding under State law involving an Indian child, has the right to examine all reports or other documents filed with the Court upon which any decision to such action may be based. No decision of the Court shall be based on any report or other document not filed with the Court.
M. Maintenance of ICWA case records	DCS shall establish a single location where all records of every foster care, pre-adoptive placement and adoptive placement of Indian children by the Courts will be available within seven (7) days of a request by an Indian child's tribe or the Secretary. The records shall contain, at a minimum, the petition or complaint, all substantive orders entered in the proceeding, and the complete record of the placement determination.
N. Documentation	All diligent efforts made to identify children/families of American Native heritage must be documented in applicable TNKids applications and case recordings.

Forms:	None
Collateral documents:	<i>Bureau of Indian Affairs: Guidelines for State Courts; Indian Child Custody Proceedings</i> <i>List of ICWA Tribal Agents</i>